

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CA07-595

FEBRUARY 13, 2008

TERRY WISE

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION,
[NO. F511024]

V.

NORWOOD-LYNDA MCDOUGALD,
INC. AND AMERICAN INTERSTATE
INSURANCE COMPANY

APPELLEES

AFFIRMED

Appellant Terry Wise appeals from the decision of the Workers' Compensation Commission finding that he failed to prove that he suffered a compensable, gradual-onset injury to his low back. We affirm.

Appellant was forty-seven years old at the time of the hearing and had been driving a log truck for seventeen years. He had worked for appellee Norwood-Lynda McDougald, Inc., for a year and a half. For several weeks before he became unable to work, he had been hauling logs out of the Felsenthal river bottoms down a five-mile-long dirt road. He testified that the road had holes in it, was spongy, and was extremely rough. Appellant testified that, on September 15, 2005, his back was sore after work. He stated that he returned to work on Friday the 16th but that his back was still sore. After hauling one load of logs, appellant told

a co-worker, Parnell Jackson, that he thought he had hurt his back. Jackson gave him some aspirin, but his back pain continued to worsen. After resting over the weekend, appellant returned to work on Monday. He testified that he was in so much pain that he told his boss, Mr. McDougald, that he thought that he had hurt his back. Appellant said that Mr. McDougald told him that he would be fired if he did not make another load. Appellant went home, made a doctor's appointment for the next day, and has been unable to return to work since that day.

On September 20, 2005, appellant went to see his family doctor, Dr. Carter Cox, Jr. Dr. Cox recommended that appellant have an MRI. Dr. McDonald, the radiologist who reviewed the MRI, stated his impression as follows:

Multilevel degenerative disc and joint disease with multilevel disc bulges. These are asymmetric and more pronounced on the left at L4-5 and L5-S1 with resultant compromise of the respective left nerve roots at these levels. I cannot completely exclude a component of a far left lateral disc herniation at L5-S1.

Appellant testified that Dr. Cox told him that the degenerative "stuff" had nothing to do with his injury from the truck but was just "part of getting old." He also testified that the bulging disc was "what happened in the truck." On cross-examination, appellant admitted that he did not have any reports suggesting that he was not able to work. The medical evidence presented by appellant included the MRI and a handwritten letter from Dr. Cox dated January 11, 200[6]. In the letter Dr. Cox stated that he examined appellant on September 20, 2005, for low back pain and that appellant told him that the symptoms had begun one week earlier while he was driving a log truck over rough roads. Dr. Cox also said

that the MRI showed nerve-root involvement at L5-S1 on the left side. No additional medical evidence was introduced.

The Administrative Law Judge found that appellant sustained a compensable, gradual-onset back injury. The Commission reversed, finding that appellant failed to prove by a preponderance of the evidence that he sustained a compensable injury and denied appellant's claim for benefits. Appellant has appealed the Commission's decision, arguing that there is no substantial evidence to support its decision.

When reviewing the sufficiency of the evidence to support a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and will affirm if the Commission's decision is supported by substantial evidence. *Wright v. ABC Air, Inc.*, 44 Ark. App. 5, 864 S.W.2d 871 (1993). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *Stafford v. Arkmo Lumber Co.*, 54 Ark. App. 286, 288–89, 925 S.W.2d 170, 171–72 (1996).

In this case, appellant is not contending that his injury is the result of a specific incident, identifiable by time and place of occurrence. Instead, he is arguing that the injury is a gradual-onset injury, which is

[a]n injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is: . . . (b) [a] back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

Ark. Code Ann. § 11-9-102(4)(A)(ii)(Supp. 2007). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). A claimant seeking workers' compensation benefits for a gradual-onset injury must prove by a preponderance of the evidence that (1) the injury arose out of and in the course of employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(A)(ii) and (E)(ii).

Appellant claims that he sustained this gradual-onset injury while driving a log truck for appellee. The Commission found that appellant presented inconsistent evidence regarding how the injury occurred, suggesting that it was gradual from driving too much on rough roads and that it was specific from hitting a hole or rut and being slammed around in his truck on September 15, 2005. The Commission found that the testimony indicated that appellant was unsure of how or why his back hurt. The Commission also noted that appellant's own doctor did not relate his current back problems to an acute injury, but advised appellant that the findings on the MRI were part of "getting old."

The Commission found that there was no credible evidence establishing that appellant's medical findings regarding degenerative disc disease arose out of or were causally

related to his work driving logging trucks and denied benefits. We hold the Commission's decision displays a substantial basis for the denial of relief.

Affirmed.

HART and MARSHALL, JJ., agree.